LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

June 11, 2013

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State of South Carolina, Respondent, v. Naticia Laurent, Appellant, Case No. 2013-CP-07-2351

Dear Ms. Gee:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

(1) Proof of service of the notice of appeal on the respondent[s].

(2) A copy of the order which is to be challenged on appeal.

(3) A filing fee is not required as this is an appeal from a Post Conviction action.*

Sincerely,

Larry W. Weidner, II
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
Attorney for Appellant

cc: Ashleigh R. Wilson
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

* Under Rule 203(d)(1)(B)(iii) and (d)(2)(B)(iii), SCACR, a filing fee is not required if the appeal is from a criminal case including juvenile delinquency matters, or if the appeal is taken by the State of South Carolina, its departments or agencies. Further, no filing fees are required in post-conviction relief cases. Rule 240(d), SCACR.

RECEIVED
JUN 18 2013
SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE

2013 JUN 12 AM 5:36
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2012-CP-07-2351

State of South Carolina

Respondent,

RECEIVED
JUN 24 2013
S.C. Supreme Court

v.

Naticia Laurent, Appellant.

NOTICE OF APPEAL

Naticia Laurent appeals the order of the Honorable Perry M. Buckner dated May 2, 2013. Appellant received written notice of entry of this order on May 31, 2013.

June 11, 2013

Larry W. Weidner, II
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
Attorney for Appellant

Other Counsel of Record:
Ashleigh R. Wilson
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

RECEIVED
JUN 18 2013
SC Court of Appeals

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry Buckner, Circuit Court Judge

Case No. 2013-CP-07-2351

State of South Carolina,

Respondent,

v.

Naticia Laurent, Appellant.

RECEIVED
JUN 24 2013
S.C. Supreme Court

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on June 11, 2013, addressed to its attorney of record, Ashleigh R. Wilson, Post Office Box 11549, Columbia, South Carolina 29211.

June 11, 2011

Larry W. Weidner, II
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
Attorney for Appellant

RECEIVED
JUN 18 2013
SC Court of Appeals

LETTER TO CLERK OF CIRCUIT COURT
FILING NOTICE OF APPEAL

2013 JUN 12 AM 5:36

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

11 June 2013

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901

RE: State of South Carolina, Respondent, v. Naticia Laurent, Appellant, Case No. 2012-CP-07-2013

Dear Madam Clerk:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,

Larry W. Weidner, II
6 Professional Village Circle
Beaufort, South Carolina 29907
(843) 521-0004
Attorney for Appellant

cc: Ashleigh R. Wilson
Post Office Box 11549
Beaufort, South Carolina 29211
Attorney for Respondent

RECEIVED
JUN 18 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	2012-CP-07-2351
	)	
	)	
Naticia Laurent, #348468,	)	
	)	
Applicant,	)	
	)	
v.	)	**ORDER OF DISMISSAL**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

13 MAY -2 PM 3:44
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 25, 2012. The Respondent made its Return on February 20, 2013. An evidentiary hearing into the matter was convened on April 4, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Larry W. Weidner, II, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

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The Applicant testified on her own behalf at the PCR hearing. Applicant's plea counsel, Helen Roper Dovell, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the November 2009 term of the Beaufort County Grand Jury for homicide by child

abuse (2009-GS-10-2249). Helen Roper Dovell, Esquire, represented the Applicant. The Applicant pled guilty as indicted. The Honorable Roger M. Young sentenced the Applicant to confinement for 20 years. Applicant did not appeal the plea or sentence.

ALLEGATIONS

The Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. "My crime was an accident and my attorney did not push the issue to the test of her ability."

At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel. The Applicant alleged during the hearing that counsel was ineffective for failing to request a suspended sentence during her guilty plea proceeding.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of the Testimony

The Applicant testified she met with counsel frequently before pleading guilty. She testified she recalls reviewing discovery with her attorney and discussing possible defenses. She testified she discussed all plea offers made by the State with her attorney and that it was her decision to plead guilty. The Applicant testified further she discussed the facts of the case with

her attorney. She testified she discussed requesting a suspended sentence with counsel prior to her plea. She testified that at first she thought her attorney could request a suspended sentence, but was then told the law had changed and a suspended sentence could not be requested. The Applicant testified she was advised by counsel of the potential sentence for homicide by child abuse and was aware of the case law about requesting a suspended sentence. Lastly, the Applicant testified that before pleading guilty she knew counsel would not be requesting a suspended sentence.

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Plea counsel testified she was appointed to represent the Applicant and has spent over five years practicing criminal law. She testified that she met with the Applicant several times prior to her guilty plea and filed Brady and Rule 5 motions on the Applicant's behalf. She testified she reviewed the discovery material she received with the Applicant and discussed with her the elements of the charge against her and what the State was required to prove. Counsel testified they discussed the Applicant's version of the facts and possible defenses. Counsel testified she investigated the case by speaking with the Applicant's husband and the forensic pathologist.

Counsel testified she entered into plea negotiations on the Applicant's behalf and the State offered a negotiated sentence of 20 years. Counsel testified she communicated the offer with the Applicant, informed her of the consequences of the plea, and informed her of her constitutional rights. Counsel testified that initially the Applicant wanted to proceed to trial.

Counsel testified further she initially she believed she could present substantial mitigation evidence to the Court and request a suspended sentence. However, counsel testified that after

State v. Jacobs[1] was decided she did not believe she could request a suspended sentence. She testified that she spoke with the solicitor and tried to get them to reduce the charge to voluntary manslaughter, but they refused. Counsel testified she spoke with the Applicant about the inability to request a suspended sentence and advised her to plead guilty because the 20 year minimum sentence was the best they could do.

Counsel testified she made a judgment call to not to request a suspended sentence, but now thinks she was ineffective for not requesting a suspended sentence for the Applicant. Counsel testified she knows of at least one instance in a homicide by child abuse case where the defendant successfully argued for a suspended sentence after State v. Jacobs. She testified further that in hindsight she should have argued for a suspended sentence.

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Ineffective Assistance of Counsel

The Applicant alleges that she received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this

[1] 393 S.C. 584, 713 S.E.2d 621 (2011).

presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that plea counsel gave credible testimony during the evidentiary hearing. This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that she was guilty of these offenses. Applicant told the plea court that she was satisfied with her attorney and that no one had threatened or promised her anything to plead guilty. This Court finds that Applicant understood the terms of the negotiated sentence.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds plea counsel was not ineffective for failing to request a suspended sentence for the Applicant's homicide by child abuse charge. This Court finds counsel's testimony that in hindsight she would have requested a suspended sentence for the Applicant is

not dispositive. As this Court is well aware, counsel's decisions must be assessed "in light of the information known at the time of the decisions, not in hindsight." Strickland v. Washington, 466 U.S. 668, 680, 104 S. Ct. 2052, 2060-61 (1984).

Counsel testified that her understanding of the law at the time of the Applicant's plea was that she could not request a suspended sentence. This Court finds that counsel's understanding of the law at the time was accurate. Section 24-21-410 of the South Carolina Code gives a judge the ability to impose a suspended sentence after a conviction or plea when the crime is not punishable by death or life imprisonment.[2] State v. Jacobs affirmed this established statutory principle by holding the trial court lacked the authority to suspend a sentence for burglary-first degree where the maximum penalty was a life sentence. In this case, homicide by child abuse has a penalty that ranges from 20 years to a life sentence.[3] Because the Applicant pled to a crime that was punishable by life imprisonment, 24-21-410 does not give the plea judge the ability to suspend the sentence. This Court finds counsel's decision to not request a suspended sentence for homicide by child abuse in light of State v. Jacobs was proper.

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This Court also finds that counsel's inability to request a suspended sentence had no bearing on the voluntariness of the Applicant's plea. Counsel and the Applicant both testified that they discussed the inability to request a suspended sentence prior to the plea. The Applicant was also present during the plea proceeding when counsel articulated her understanding of State v. Jacobs and expressed to the Court her inability to request a suspended sentence. This Court finds the Applicant's guilty plea was entered freely and voluntarily. This Court finds that this

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[2] "After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation." S.C. Code Ann. § 24-21-410 (1976).

[3] S.C. Code Ann. §16-3-85(C)(1) (1976).

allegation is without merit and the Applicant has failed to carry her burden of proving trial counsel was ineffective for failing to request a suspended sentence for the Applicant' homicide by child abuse conviction.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during her guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that she must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. Her attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16 day of April, 2013

Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Walterboro, South Carolina.

MWWH
6 Professional Village Circle
Beaufort, SC 29907

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The Honorable Tanya A. Gee
Clerk, South Carolian Court of Appeals
P.O. Box 11629
Columbia SC 29211-1629

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